

CHAPTER 122

(HB 202)

AN ACT relating to deferred compensation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 18A.230 is amended to read as follows:

As used in KRS 18A.230 to 18A.275, unless the context requires otherwise:

- (1) "Employee" means a person holding an office, position or employment in state government and agencies thereof and also includes persons in the public school system.
- (2) "Income" means earnings of a person while an employee of the state and agencies thereof or public school system.
- (3) "Asset" means any owned physical object or right having a monetary value.
- (4) "Trust fund" means a fund consisting of assets received and held by a government unit or its designated custodian to be expended or invested in accordance with conditions of the trust.
- (5) "Deferred compensation" means a method which allows employees to authorize income to be deducted from their current earning and set aside to be paid at a later date.
- (6) "Board" means the board of trustees as established by KRS 18A.245.
- (7) ***"Authority" means the Kentucky Public Employees' Deferred Compensation Authority.***

➔Section 2. KRS 18A.250 is amended to read as follows:

- (1) The authority shall establish and maintain a deferred compensation plan for the employees of the State of Kentucky. Participation in such plan shall be by ~~by a specific written~~ agreement between such employees and the authority and shall provide for the deferral of such amount of compensation as requested by the employee. Participating employees must authorize that such deductions be made from their wages for the purpose of participation in such program. Amounts so deducted shall be deposited in the State Treasury to the credit of the trust fund.
- (2) The board is directed to develop and obtain, for the benefit of employees, a qualified employee plan that includes a qualified cash or deferred arrangement as described in Section 401(K)(2) of the Internal Revenue Code. The board is directed to develop a program for participants to borrow from their account or accounts in the plan. The plan shall be in addition to other plans offered by the board, and shall be offered to employees upon receipt of appropriate approval of the Internal Revenue Service or on January 1, 1985, whichever occurs later.
- (3) ***Notwithstanding the provisions of KRS 337.060, agreements to participate and plan elections made by employees pursuant to subsections (1) and (2) of this Section may be made in writing or by electronic record, signature, or contract as determined by the authority and in accordance with the provisions of KRS 369.101 to 369.120. Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plan shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.***

➔Section 3. KRS 18A.255 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 18A.230 to 18A.275, funds held for the State of Kentucky public employees deferred compensation trust fund pursuant to ~~to a written deferred compensation~~ agreement between the state and participating employees may be invested in such investments as are deemed appropriate by the trustees, including but not limited to annuity contracts. ***Agreements may be made in writing or by electronic record, signature, or contract as determined by the authority in accordance with the provisions of KRS 369.101 to 369.120 and shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.***
- (2) Funds deposited to the credit of the trust fund from payroll deductions made pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500 until such funds are invested pursuant to the ~~written~~ deferred

compensation agreements between the state and participating employees and actually credited to accounts for plan participants. Notwithstanding KRS 42.500, interest earned from such temporary investments shall be used to defray the expenses of administering the deferred compensation system.

- (3) Neither the authority nor the board shall be liable for any losses or claims due to a participant's actions in connection with the investment advice provided to the participant by operation of KRS 18A.245(7)(f) or otherwise. The authority and board shall have no duty or obligation to monitor, review, or assess the specific investment advice provided to a participant.

➔Section 4. KRS 18A.270 is amended to read as follows:

- (1) Any city, county, or other political subdivision or combination of these entities may establish for its employees a deferred compensation program. ***Notwithstanding the provisions of KRS 337.060***, participation shall be by written agreement ***or by electronic record, signature, or contract and in accordance with the provisions of KRS 369.101 to 369.120*** between such employees and the legislative authority of the city, county, or other political subdivision providing for the deferral of such compensation and the subsequent investment and administration of such funds. ***Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plans shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.***
- (2) Such subdivision, acting through its legislative authority, may appoint such agency or department as it deems appropriate to establish and administer a deferred compensation plan pursuant to KRS 18A.230 to 18A.275. For purposes of funding such agreements between the city, county, or other such political subdivision and the participating employees, the agency or department as designated by the legislative authority to establish and administer such plans may invest such funds in such investments deemed appropriate by said agency or department, including, but not limited to annuity contracts.
- (3) In no case shall such investment be other than permitted by KRS 18A.230 to 18A.275 and not prohibited by Section 179 of the Kentucky Constitution and must be offered by such persons or companies authorized and duly licensed by the State of Kentucky and applicable federal regulatory agencies to offer such insurance or investment programs in compliance with all relevant provisions of KRS 18A.230 to 18A.275.
- (4) Such a deferred compensation program is in addition to any retirement or pension system or any other benefit program provided by law for employees of the city, county, or other political subdivision. Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the retirement and pension benefits earned by any employee but any sum so deducted shall not be included in the computation of any income taxes withheld for any such employee.
- (5) This section does not limit the power or authority of any municipal corporation or other political subdivision to provide other such plans or programs for deferring compensation of their officials and employees.

Signed by Governor April 12, 2010